

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 24th OF AUGUST, 2023

MISC. CRIMINAL CASE No. 36533 of 2023

BETWEEN:-

**ISHWAR SINGH S/O RAGHAV SINGH, AGED ABOUT 35
YEARS, OCCUPATION: FARMER R/O KANGNI KHEDA
VILLAGE TEHSIL AGAR (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI NEERAJ KUMAR SONI - ADVOCATE.)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION KOTWALI, AGAR
(MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. VARSHA SINGH THAKUR - DY. GOVT. ADVOCATE.)

*This application coming on for admission this day, the court passed the
following:*

ORDER

Heard with the aid of case diary.

This is first application filed under Section 439 of Cr.P.C. for grant of bail to the applicant, in connection with FIR/Crime No.188/2023, Date:-(Not mentioned) registered at P.S.-Agar- Malwa, District-Agar (M.P.) for commission of offence punishable under Sections 8/15 and 25 of the N.D.P.S. Act.

2. Prosecution story in brief is that on 30/03/2023, the present applicant Ishwar and co-accused Sandeep were transporting contraband substance in Bolero bearing registration no. MP-09-GJ-0296. The vehicle was driven by co-

accused Sandeep and present applicant was sitting next to him. The police stopped and searched the vehicle and it was found that there were 196.72 Kg of Poppy Straw in 8 black plastic sacks, 1 white plastic sack and 6 jute sacks. After completing other formalities the police had seized the aforesaid contraband from the joint possession of the applicant and co-accused Sandeep. The accused persons have no valid licence or authority to transport the contraband. Later on it was found that co-accused Rahul Bijawat is registered owner of the vehicle. It was also found that the co-accused Devesh had supplied the contraband to the present applicant and co-accused Sandeep. It was also found that co-accused Devesh was piloting the aforesaid vehicle with Swift Dzire car bearing registration no. MP-13-CE-2712.

3. Learned counsel for the applicant/ accused submits that, the applicant has not committed the offence and has falsely been implicated in the case. Mandatory provisions under Sections 42, 50 and 52-A of N.D.P.S. Act, 1985 is not complied by the police. Therefore, applicant is entitled for bail. No effort was made to obtain independent witnesses. Site map is not enclosed alongwith chargesheet. The applicant is on bail in other offences registered against him in crime Nos.14/2021, 258/2020 and 90/2019. The applicant is not a habitual offender, in fact he has falsely been implicated in the aforesaid crimes. The learned counsel has further submitted that the applicant is in custody since 30/03/2023. Chargesheet has been filed. Trial will take considerable long time for its disposal. Therefore, it is prayed that the applicant be released on bail. Reliance is placed upon the case of *Simranjeet Singh V State Of Punjab* [order dated 09/05/2023 passed by the Apex court in CRA no. 1443/2023].

4. On other hand learned counsel for the non-applicant/State has objected

the prayer and submitted that apart from the crimes stated by counsel for the applicant, a crime no.258/2020 (S.T. no.11/2021) is also pending against the applicant, likewise this offence. The applicant is a habitual offender. Huge quantity of contraband was seized from possession of the applicant. All mandatory provisions of the N.D.P.S. has been complied by the police. Therefore, the applicant is not entitled for bail.

5. In the case of ***Simranjeet Singh (Supra)*** the Apex court while deciding the appeal on the merits has observed in paragraph 8 as under:-

“8. In paragraphs 15 to 17 of the decision of this Court in Mohanlal's case , it was held thus:

15. It is manifest from Section 52-A(2) include (supra) that upon seizure of the contraband the same has to be forwarded either to the officer-in-charge of the nearest police station or to the officer empowered under Section 53 who shall prepare an inventory as stipulated in the said provision and make an application to the Magistrate for purposes of (a) certifying the correctness of the inventory, (b) certifying photographs of such drugs or substances taken before the Magistrate as true, and (c) to draw representative samples in the presence of the Magistrate and certifying the correctness of the list of samples so drawn.

16. Sub-section (3) of Section 52-A requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer-in-charge of the police station or the officer empowered, the officer concerned is in law duty-bound to approach the Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.

17. The question of drawing of samples at the time of seizure which, more often than not, takes place in the absence of the Magistrate does not in the above scheme of things arise. This is so especially when according to Section 52-A(4) of the Act, samples drawn and certified by the Magistrate in compliance with subsections (2) and (3) of Section 52-A above constitute

primary evidence for the purpose of the trial. Suffice it to say that there is no provision in the Act that mandates taking of samples at the time of seizure. That is perhaps why none of the States claim to be taking samples at the time of seizure.”

6. Having heard learned counsel for the parties, perused the case-diary also considering the facts and circumstances of the case and quantity of contraband substance, in view of this court, it is not a fit case to grant bail to the applicant. Resultantly, application for bail is **rejected**.

(PRAKASH CHANDRA GUPTA)
JUDGE

ajit

